

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-197069 AND ALL  
OTHER SEAMAN DOCUMENTS

Issued to: William H. Hogan

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1537

William H. Hogan

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 22 April 1965, an Examiner of the United States Coast Guard at Port Arthur, Texas suspended Appellant's seaman documents for twelve months outright plus twelve months' probation upon finding him guilty of misconduct. The three specifications found proved allege that while serving as Boatswain on board the United States SS SMITH CONQUEROR under authority of the document above described, on 13 January 1965, at sea, Appellant wrongfully failed to perform his regular duties, wrongfully failed to perform his regular duties due to intoxication and wrongfully had intoxicating liquor in his possession.

At the hearing, Appellant was represented by non-professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of the Master, a certified copy of an entry in the Official Logbook, and a certified copy of extracts from the Shipping Articles.

In defense, Appellant admitted that he had a single drink but denied that he was in his bunk or intoxicated when the Master entered Appellant's room.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and three specifications had been proved, and entered the above order of suspension. This includes a prior suspension of four months which had been placed on probation in July 1964.

The entire decision was served on 24 April but Appellant did not surrender his document until 6 October. No action was taken to transcribe the hearing record until after the latter date.

FINDINGS OF FACT

On 13 January 1965, Appellant was serving as Boatswain on

board the United States SS SMITH CONQUEROR and acting under authority of his document while the ship was at sea. His regular working hours were 0800 to 1200 and 1300 to 1700.

About 1620 on this date, Appellant was asleep in his bunk when the Master entered the room. When the Master awakened Appellant, it was apparent that he had been drinking intoxicants to some extent. The Master found partly filled bottle of intoxicating liquor in the room.

Appellant's prior record consists of an admonition in 1961 for disobedience of an order; a suspension on probation in 1964 for failure to perform duties due to intoxication and possession of intoxicating liquor; four months' outright suspension plus four months' suspension on eighteen months' probation in July 1964 for disobedience of an order and failure to turn to.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant's testimony at the hearing represents the truth. Also, Appellant was not the only occupant of the room and the bottle found by the Master did not belong to Appellant.

It is requested that the order be modified since this is Appellant's trade and he has a family to support.

### OPINION

In effect, Appellant admits the offenses except the allegation that his failure to perform his duties was due to intoxication. The finding that the latter specification was proved is set aside and the specification is dismissed since it constitutes a multiplicitous finding that Appellant failed to perform his duties on 13 January. Obviously, there were alternative specifications alleging this offense and only one of them should have been found proved by the Examiner.

Having dismissed the one specification, it is immaterial to the proof of the other two specifications whether Appellant was in his bunk or intoxicated when the Master entered the room. The Examiner accepted as true the Master's uncontradicted testimony that Appellant was in his room at 1620 when he should have been working; and Appellant's admission that he had a drink of intoxicating liquor is sufficient to prove the alleged wrongful possession of such liquor regardless of who owned the bottle found in the room. Consequently, it is not material whether or not Appellant had a roommate.

The extent of Appellant's misconduct is not clear. He was supposed to work until 1700 but stopped sometime before 1620. Appellant might have been working until shortly before 1620 or he might have stopped work much earlier in the day as a result of drinking or for some other reason. The Master indicated that the Chief Mate could shed some light on this but the mate was not called as a witness.

Under these circumstances, the outright portion of the suspension will be modified to eight months to run from 19 May 1965 (when the notice of appeal was filed in which Appellant asked what to do next) since he was not then advised to surrender his document. The document was not surrendered until 9 October, but Appellant has not sailed since the hearing. Although ignorance of the requirements is usually no excuse, Appellant should have been again informed of the necessity to deposit his document (as in the Examiner's order) after he specifically asked for advice as to what he should do next. The letter to Appellant in reply did not mention this matter.

#### ORDER

The order of the Examiner dated at Port Arthur, Texas, on 22 April 1965, is MODIFIED to provide for an outright suspension of eight (8) months from 19 May 1965 and an additional suspension of six (6) months which not to become effective unless Appellant is found guilty of an offense committed within six (6) months after completion of the outright suspension.

As MODIFIED, the order is AFFIRMED.

E.J. Roland  
Admiral United States Coast Guard  
Commandant

Signed at Washington, D.C., this 30th day of December 1965.

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